

76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties -- Evidence of age raised by defendant.

(1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.

(2) A person commits unlawful sexual activity with a minor if, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in violation of Section 76-5-405, the actor:

(a) has sexual intercourse with the minor;

(b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(3) A violation of Subsection (2) is a third degree felony unless the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred, in which case it is a class B misdemeanor.

Repealed and Re-enacted by Chapter 82, 1998 General Session